

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

NORTH COAST REGION

IN THE MATTER OF:) FIRST AMENDED COMPLAINT
Bo Dean Co., Inc.) NO. R1-2021-0047-A
SONOMA COUNTY) FOR
) ADMINISTRATIVE CIVIL LIABILITY
)
)
)
) September 14, 2023

The Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) hereby gives notice that:

The Regional Water Board alleges that Bo Dean Co., Inc. (Discharger) has violated provisions of law for which the Regional Water Board may impose civil liability pursuant to sections 13385 and 13268 of the California Water Code (Water Code). This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

BACKGROUND

1. The Discharger operates Mark West Quarry, an aggregate rock quarry, located on three parcels of land at 4611 Porter Creek Road in Sonoma County (Facility).
2. The Discharger is subject to the terms of the *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities*, Order NPDES No. CAS000001 (Permit, or Industrial General Permit) because it conducts an industrial activity for which it is required to enroll in the Permit. The Discharger has been enrolled in previous iterations of the Permit since at least 1993 and submitted a Notice of Intent to comply, thereby enrolling in the current iteration of the Permit, in June 2015.
3. The Discharger is subject to the terms of the *Water Code Section 13267 Investigative Order*, Order No. R1-2019-0029 (Investigative Order) issued by the Regional Water Board to the Discharger on May 1, 2019. The Investigative Order requires the Discharger to perform certain tasks, including but not limited

to, collecting samples, uploading sampling reports and photographic documentation, and providing notifications.

4. The Facility discharges stormwater to Porter Creek, a perennial tributary to Mark West Creek, a tributary to the Russian River, and a water of the United States.
5. The *Water Quality Control Plan for the North Coast Basin* (Basin Plan) designates the following beneficial uses for the Mark West Subarea and Porter Creek:
 - a. Municipal and domestic supply;
 - b. Agricultural supply;
 - c. Industrial service supply;
 - d. Industrial process supply;
 - e. Groundwater recharge;
 - f. Freshwater replenishment;
 - g. Navigation;
 - h. Water contact recreation;
 - i. Non-contact water recreation;
 - j. Commercial and sport fishing;
 - k. Warm freshwater habitat;
 - l. Cold freshwater habitat;
 - m. Wildlife habitat;
 - n. Rare, threatened, or endangered species;
 - o. Migration of aquatic organisms;
 - p. Spawning, reproduction, and/or early development.
6. The Russian River is listed on the Clean Water Act section 303(d) impaired water body list as being impaired for sediment.
7. Industrial General Permit Section III.A. states, "All discharges of stormwater to waters of the United States are prohibited except as specifically authorized by this General Permit or another NPDES permit."
8. Industrial General Permit Section X.H.1. requires, "The Discharger shall, to the extent feasible, implement and maintain all the following minimum BMPs [best management practices] to reduce or prevent pollutants in industrial stormwater discharges."
9. Minimum BMPs are specifically articulated in Permit Section X.H. and include: good housekeeping, preventative maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment control, employee training program, and quality assurance and record keeping.

10. Industrial General Permit Section X.H.2. requires, “In addition to the minimum BMPs described in Section X.H.1., the Discharger shall, to the extent feasible, implement and maintain any advanced BMPs ... necessary to reduce or prevent discharges of pollutants in its [stormwater] discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.” As described in Section X.H.2, advanced BMPs include exposure minimization BMPs, stormwater containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs.
11. The Regional Water Board inspected the Facility on 21 occasions on the following dates: December 17, 2018; January 9, 2019; January 16, 2019; February 13, 2019; February 19, 2019; February 26, 2019; March 20, 2019; May 14, 2019; May 16, 2019; November 26, 2019; December 2, 2019; December 6, 2019; August 13, 2020; November 17, 2020; August 24, 2021; October 25, 2021; December 9, 2022; December 10, 2022; January 13, 2023; January 14, 2023; and January 23, 2023. Regional Water Board staff observed evidence of violations of the Industrial General Permit and Clean Water Act section 301 at the Facility throughout this time period.¹
12. The Discharger was notified of the violations observed during these inspections numerous times by Regional Water Board staff as they made attempts to bring the Discharger back into compliance with the Industrial General Permit. Regional Water Board staff issued 18 inspection memos to the Discharger, which described conditions observed during inspections at the Facility and identified necessary corrective actions. Additionally, on May 1, 2019, Regional Water Board staff issued a Notice of Violation to the Discharger citing violations of the Industrial General Permit. In addition to these written communications, Regional Water Board staff met with the Discharger numerous times to discuss conditions at the Facility in-person and virtually.

ALLEGATIONS

1. **Violation 1:** The Discharger violated Industrial General Permit Section III.A., Water Codes section 13376, and section 301 of the Clean Water Act when it discharged approximately 10,519,608 gallons of sediment-laden stormwater not otherwise specifically authorized by the Permit for 73 days: October 2, 2018; November 21-23, 2018; November 27-29, 2018; December 1, 2018; December 5, 2018; December 15-16, 2018; December 21, 2018; December 23-24, 2018; January 5-6, 2019; January 8-9, 2019; January 11, 2019; January 15-16, 2019; January 20, 2019; February 1-4, 2019; February 8-10, 2019; February 12-17,

¹ However, the Discharger states in its response to the Investigative Order that violations occurred as early as October 2018.

2019; February 25-27, 2019; March 2-3, 2019; March 5-6, 2019; March 9-10, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 5-7, 2019; April 15, 2019; May 16-17, 2019; May 19-20, 2019; May 26, 2019; December 2, 2019; December 4, 2019; December 22, 2019; December 29, 2019; January 21, 2020; March 24, 2020; April 4, 2020; November 17, 2020; January 4, 2021; October 22, 2021; December 10, 2022; January 13, 2023; and January 14, 2023.

2. **Violation 2:** The Discharger violated Industrial General Permit Section X.H.1.a., by failing to implement and maintain good housekeeping minimum BMPs for 127 days: December 18, 2018; December 21, 2018; December 23-24, 2018; January 5-6, 2019; January 8-9, 2019; January 11, 2019; January 14-20, 2019; January 30-31, 2019; February 1-5, 2019; February 8-17, 2019; February 25-27, 2019; March 2-6, 2019; March 9-10, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 1-8, 2019; April 15, 2019; May 15-16, 2019; May 18-21, 2019; May 26, 2019; September 16, 2019; September 18, 2019; November 26-27, 2019; November 29-30, 2019; December 1-4, 2019; December 6-8, 2019; December 10-13, 2019; December 18-19, 2019; December 22, 2019; December 25, 2019; December 29, 2019; January 4, 2020; January 7, 2020; January 9, 2020; January 11, 2020; January 13, 2020; January 16, 2020; January 21, 2020; January 24-26, 2020; January 28, 2020; March 6-7, 2020; March 14-15, 2020; March 17-18, 2020; March 24-25, 2020; March 28-29, 2020; April 4-6, 2020; April 9, 2020; April 12, 2020; May 11-14, 2020; May 16-18, 2020; November 17, 2020; October 25, 2021; November 7, 2022; December 8, 2022; December 10, 2022; and January 14, 2023.
3. **Violation 3:** The Discharger violated Industrial General Permit Section X.H.1.d., by failing to implement and maintain material handling and waste management minimum BMPs for 93 days on: February 25-27, 2019; March 2-6, 2019; March 9-10, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 1-8, 2019; April 15, 2019; May 15-16, 2019; May 18-21, 2019; May 26, 2019; September 16, 2019; September 18, 2019; November 26-27, 2019; November 29-30, 2019; December 1-4, 2019; December 6-8, 2019; December 10-13, 2019; December 18-19, 2019; December 22, 2019; December 25, 2019; December 29, 2019; January 4, 2020; January 7, 2020; January 9, 2020; January 11, 2020; January 13, 2020; January 16, 2020; January 21, 2020; January 24-26, 2020; January 28, 2020; March 6-7, 2020; March 14-15, 2020; March 17-18, 2020; March 24-25, 2020; March 28, 2020; March 29, 2020, April 4-6, 2020; April 9, 2020; April 12, 2020; May 11-14, 2020; May 16, 2020; May 17-18, 2020; November 17, 2020; October 25, 2021; November 7, 2022; December 8, 2022; and January 14, 2023.
4. **Violation 4:** The Discharger violated Industrial General Permit Section X.H.1.e. by failing to implement and maintain erosion and sediment control minimum BMPs for 121 days on: December 18, 2018; December 21, 2018; December 23-24, 2018; January 5-6, 2019; January 8-9, 2019; January 11, 2019; January 14-

20, 2019; January 30-31, 2019; February 1-5, 2019; February 8-17, 2019; February 12-16, 2019; February 25-27, 2019; March 2-6, 2019; March 9-10, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 1-8, 2019; April 15, 2019; May 15-16, 2019; May 18-21, 2019; May 26, 2019; September 16, 2019; September 18, 2019; November 26-27, 2019; November 29-30, 2019; December 1-4, 2019; December 6-8, 2019; December 10-13, 2019; December 18-19, 2019; December 22, 2019; December 25, 2019; December 29, 2019; January 4, 2020; January 7, 2020; January 9, 2020; January 11, 2020; January 13, 2020; January 16, 2020; January 21, 2020; January 24-25, 2020; January 26, 2020; March 6-7, 2020; March 14-15, 2020; March 17-18, 2020; March 24-25, 2020; March 28, 2020; March 29, 2020, April 4-6, 2020; April 9, 2020; April 12, 2020; May 11-14, 2020; May 16, 2020; and May 17-18, 2020.

5. **Violation 5:** The Discharger violated Industrial General Permit Section X.H.2. by failing to implement and maintain advanced BMPs for 83 days on: December 18, 2018; December 21, 2018; December 23-24, 2018; January 5-6, 2019; January 8-9, 2019; January 11, 2019; January 14-20, 2019; January 30-31, 2019; February 1-5, 2019; February 8-17, 2019; February 25-27, 2019; March 2-6, 2019; March 9-10, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 1-8, 2019; April 15, 2019; May 15-16, 2019; May 18-21, 2019; May 26, 2019; September 16, 2019; September 18, 2019; November 26-27, 2019; November 29-30, 2019; December 1-4, 2019; December 6, 2019; November 17, 2020; August 24, 2021; November 9, 2022; and January 23, 2023.
6. **Violation 6:** The Discharger violated Industrial General Permit Section XI.B.11.a., by failing to submit all sampling and analytical results for all individual or Qualified Combined Samples via the Stormwater Multiple Application and Report Tracking System (SMARTS) within 30 days of obtaining all results for each sampling event. Three reports were submitted beyond the required 30 days and the Prosecution Team is exercising its discretion, as described in detail in Attachment A, to only allege three days of violation, one day of violation for each report.
7. **Violation 7:** The Discharger violated Investigative Order Number R1-2019-0029, Sections B.1 and B.2, between April 4, 2020, and January 14, 2023, by failing to conduct receiving water monitoring and sampling and failing to document the monitoring with photographs. The Prosecution Team is alleging seven days of violations, on: April 4, 2020; November 17, 2020; January 4, 2021; March 18, 2021; October 22, 2021; December 13, 2021; and December 10, 2022.

LEGAL AND REGULATORY BACKGROUND

8. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
9. Pursuant to Water Code section 13385(a), any person who violates waste discharge requirements or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c), in an amount not to exceed the sum of both the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
10. Pursuant to Water Code section 13268(a), any person who fails to furnish technical or monitoring program reports as required by Water Code section 13267(a) or (b) may be subject to civil liability pursuant to Water Code section 13268(b), in an amount not to exceed \$1,000 for each day in which the violation occurs.
11. Pursuant to Water Code sections 13385(e) and 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
12. The State Water Resources Control Board's (State Water Board) *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for assessing administrative civil liability. The use of the Enforcement Policy addresses the factors that are required to be considered when imposing a civil liability.
13. The details of these violations and the application of the Enforcement Policy to these violations are set forth in full in the accompanying First Amended Factor Consideration and Liability Methodology for Mark West Quarry (Attachment A), which is incorporated herein by this reference as if set forth in full.

PROPOSED CIVIL LIABILITY

14. The Prosecution Team recommends that the Regional Water Board impose civil liability against the Discharger in the amount of **eight million five hundred eighty-nine thousand four hundred and six dollars (\$8,589,406)** for the violations alleged herein and in Attachment A. While the total base liability amount reached using the Enforcement Policy is \$12,752,256, the proposed civil liability reflects significant reductions proposed by the Prosecution Team that are described in detail in Attachment A.

MAXIMUM AND MINIMUM ADMINISTRATIVE CIVIL LIABILITY

15. Pursuant to Water Code section 13385(c), the statutory maximum administrative civil liability for Violation 1 is \$10,000 per day of violation, and \$10 for each gallon discharged and not cleaned up in excess of 1,000 gallons. For Violations 2 through 6, pursuant to Water Code section 13385(c), the statutory maximum is \$10,000 per day of violation. For Violation 7, pursuant to Water Code section 13268(b), the statutory maximum is \$1,000 per day.

16. Therefore, the calculated statutory maximum for each violation is as follows: Violation 1 is \$105,916,080; Violation 2 is \$1,270,000; Violation 3 is \$930,000; Violation 4 is \$1,210,000; Violation 5 is \$830,000; Violation 6 is \$30,000; Violation 7 is \$7,000. The total statutory maximum liability for Violations 1 through 7 is \$110,193,080. As described in further detail in Attachment A, the Total Base Liability Amount for Violations 4, 5, and 7 using the Enforcement Policy factors exceeds the statutory maximum. Therefore, the final proposed liability for Violations 4, 5, and 7 is the statutory maximum.

17. Pursuant to Water Code section 13385(e), the statutory minimum is the recovery of the economic benefit for Violations 1 through 6. For Violation 7, there is no statutory minimum pursuant to Water Code section 13327.

18. Pursuant to the Enforcement Policy, the adjusted Total Base Liability Amount, as defined in Step 5 of the Enforcement Policy, should be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. Therefore, the minimum administrative civil liability amount is the economic benefit for Violations 1 through 7 plus 10 percent, which totals \$315,742.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

19. The Regional Water Board will hold a hearing on this Complaint at a public board meeting, date to be determined.² If the Regional Water Board holds a hearing, it will be governed by Hearing Procedures which will be issued by the Advisory Team. During the hearing, the Regional Water Board will hear testimony and arguments, receive evidence, and affirm, reject, or modify the proposed administrative civil liability, or determine whether to refer the matter to the Attorney General for recovery of judicial civil liability.

Dated this September 14, 2023

Claudia E. Villacorta, P.E.
Assistant Executive Officer

²The Discharger submitted a letter on September 23, 2021, waiving its right to have a hearing within 90 days.